

Remark

Applicants respectfully request reconsideration of this application as amended. No claims have been amended. Claims 19-32 and 37-45 remain cancelled. Therefore, claims 1-18, 33-36 and 46-55 are present for examination.

35 U.S.C. §103 Rejection

Knee in view of Herz

The Examiner has rejected claims 1-18, 34, 36 and 46-55 under 35 U.S.C. §103 (a) as being unpatentable over Knee et al., U.S. Patent No. 5,589,892 ("Knee") in view of Herz U.S. Patent No. 5,758,257 ("Herz"). Knee shows a remote control with three buttons each to activate a different list of favorite channels. Herz describes a system that schedules program broadcast times and that automatically recommends programs to particular viewers based on an analysis of the viewer's viewing history and demographics. Herz does not suggest how to create a list of favorite channels but instead discusses "virtual channels" which each amount to a single recommended program.

There are several aspects of, for example, Claim 1 that are neither taught nor suggested by this combination of references. First of all, Claim 1 is directed toward a method of selecting an entertainment programming preferences list at an entertainment system. Herz does not select an entertainment programming preferences list. Herz selects specific programs.

Claim 1 describes a user-definable preferences list as "identifying a plurality of different channels of entertainment programming that can be added to and deleted from each list by the identified user." The Herz "virtual channel" is not really a channel, but a "virtual channel." It is, in reality, one recommended program or, in one section of Herz, one recommended program that can be started at a set of times by tuning to different real channels. In addition, the virtual channel

cannot be added or deleted by the user. The purpose of the virtual channel is to automatically pick the right show. The user can change demographic or personality data in some versions (Col. 13, lines 55 et seq.), but the user cannot change the recommended program that is the "virtual channel."

Claim 1 is further directed toward receiving a user identification at the entertainment system. The Examiner suggests that this is the same as selecting one of the three Favorite Channel buttons 48 in Figure 4 of Knee. Of course, the buttons in Knee do not relate to any particular user but to a particular list. As a result, there is no corresponding step in Knee to "searching a set of user-definable preferences lists to identify preferences lists corresponding to the identified user." By pushing one of the buttons in Knee, the one preference list is already identified. A search is unnecessary and not suggested.

In addition, Knee presents only one preference list so there is nothing in Knee to suggest displaying a list of identified preferences lists to the user and receiving a selection of a displayed identified preferences list from the user. For this, the Examiner refers to Herz. This combination does not render the present invention obvious for several reasons.

First, the combination does not produce the claimed invention. Herz neither teaches nor suggests searching a set of user-definable preferences lists, displaying the lists and receiving a selection from the user. In the section cited by the Examiner, Herz states only that "the expected mood may be accessed and modified by the customer." Accessing and modifying a mood is not described in this cited section of Herz. It may refer to adjusting a profile as described on Col. 13, lines 55 et seq.

Even assuming that "accessed and modified" means switching from one mood to another (see e.g. Col. 45, line 64). This is not the same as the process set forth in Claim 1 because the mood is not a user-definable preferences list. The mood is a set of factors that are used to select a

program. The user cannot select a channel, a program or anything else by selecting the mood. The mood influences choices that are made for the user, not choices made by the user. The user cannot use a mood to channel surf through a favorite sub-grouping of channels. The mood is not about channel surfing, it is about choosing a program that the user should like and presenting it to him. (Note how the EPG is modified by adding or highlighting recommendations at Col. 45, line 38. It is not modified by adding or deleting channels.)

Second, even if a mood were a user-definable preferences list, there is no suggestion in Herz that a user first select an identification and then select a mood. On the contrary, reading the whole reference, it would appear that moods are used as a substitute for individual identities. Note in Column 26, lines 41-50, "after a certain amount of time the system would recognize a particular profile as belonging to a particular viewer... so that it would eventually be unnecessary for the customers to input their user Ids." However, in the preferred embodiment, customer profiles are matched to times of day. Note in Col. 27, line 62 that moods may reflect multiple customers with different tastes watching the same television. At Column 17, lines 57 et seq. moods are linked to times of day or time windows.

Herz is a voluminous patent with 68 columns of text including 95 claims. Yet in all of this description, there is no suggestion that a user select an ID, then select a mood. While such a large reference contains a great amount of text, the text must all be taken in context. The issue is what the two references would teach or suggest to a person of average skill. The issue is not whether unrelated features of the reference might be stretched far enough to vaguely resemble the recitations in the claims. Applicants respectfully submit that even if a mood could be equated with a user-defined preferences list, the two sections of Herz upon which the Examiner relies (in Columns 17 and 45) do not go together.

The two references show completely opposite approaches to finding and choosing a program. Knee shows the conventional favorite channels list except that in Knee there are three lists. The lists are built manually by the user and the user has complete control over the channels in the list. The user has no control over the shows that are broadcast over those channels. Knee relies on an assumption that certain kinds of shows are on certain channels and so by surfing through certain channels the user is likely to find something he likes. In general, this approach works well for channels like The Food Network or ESPN2, but it does not work as well for channels like CBS or BBC America.

Herz abandons the idea of channels and consistent channel programming completely. Herz looks through all the programs no matter the channel and automatically selects programs for the user. The user has no control over the program that is selected and the program has no specific relationship to any particular channel. If the system is looking for a murder mystery it will recommend it whether it is on CBS, BBC America, the Food Network or ESPN2.

In summary, the Examiner's theory is understood as follows. A person of average skill reading these two large references in context would take the idea of multiple favorite channel buttons from Knee. The person would then combine this with the idea of user Ids from Herz and dedicate each favorite channel button to a different user. Now the buttons are equal to a user Id selection. The person of average skill would then find a suggestion that the idea of moods in Herz be changed into a favorite channels list like that in Knee. This would, however, defeat the entire purpose of Herz which is to make the choices automatically. The person of average skill would then find a suggestion to add all the additional limitations of Claim 1, not suggested in either reference to provide the necessary infrastructure for a working system (e.g. searching, displaying, receiving a user selection and displaying the list). Neither reference describes any of these

background processes because neither reference contemplates such a thing. Applicants respectfully submit that this goes well beyond obvious and that Claim 1 recites a patentable invention.

All of the other pending claims contain limitations similar to those discussed above and are believed to be allowable at least on those grounds.

35 U.S.C. §103 Rejection

Knee and Herz in view of Ellis

The Examiner has rejected claims 33 and 35 under 35 U.S.C. §103 (a) as being unpatentable over Knee and Herz in view of Ellis, U.S. Patent No. 5,986,650 (“Ellis”). Ellis does not provide the teachings absent from Knee and Herz and accordingly, these claims are believed to be allowable for at least the reasons provided above.

Conclusion

Applicants respectfully submit that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicants respectfully request the rejections be withdrawn and the claims as amended be allowed.

Invitation for a Telephone Interview

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

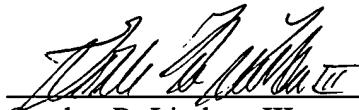
Request for an Extension of Time

Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension. Charge our Deposit Account.

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,
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